

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

LAWTON PRINTING, INC.

Employer-Petitioner

and

Case 19-UC-740

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION,
LOCAL 767M, AFL-CIO

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

I. SUMMARY

The Employer-Petitioner (hereinafter "Employer") is a family-owned corporation engaged in the printing business with a facility located in Spokane, Washington. Following ratification of a successor collective-bargaining agreement between the Employer and Union covering a unit of the Employer's employees performing work in certain jurisdictional classifications, the Employer filed the instant petition seeking to exclude the newly-created position of Hewlett Packard ("HP") Indigo 5000 operator from that unit. The issues in this case are whether the instant petition was timely filed and whether the unit should be clarified to exclude the classification of the HP Indigo 5000 operator. The Union contends that the petition is untimely because the dispute is a contractual matter best resolved by the parties' contractual grievance/arbitration procedure and because the Employer is allegedly seeking to exclude a position covered by the parties' successor agreement. The Employer argues that the HP Indigo 5000 operator position should be excluded from the unit in light of the dissimilarity in the duties and function of the HP Indigo 5000 operator relative to those of unit employees performing work on traditional lithographic presses.

Based on the record evidence and the parties' contentions and arguments, I find that the instant petition is timely and that the HP Indigo 5000 operator should be included in the unit because his job function is similar to that of the unit employees and his position is not so dissimilar to that of the unit employees to render the existing unit inappropriate.

Below, I have provided a section setting forth the evidence, as revealed by the record in this case, relating to the Employer's operations, the position in question, and events leading to the filing

¹ The Employer and the Union filed timely briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

of the instant petition. Following the "Evidence" section is my analysis of the applicable legal standards in this case, my conclusion, and a section ordering clarification of the unit to include the HP Indigo 5000 operator position.

II. EVIDENCE

A. Employer's Operations and the Unit at Issue

The Employer is engaged in the printing business at its facility located in Spokane, Washington. Raymond Lawton is the Employer's chairman and his daughter, Laura Lawton, is its president. The Employer operates its printing business in an approximately 40,000 square foot building, which also houses its sister company, File-Ez Folder, Inc.³

The Employer has four divisions: Commercial Printing; Chamber Publishing; Senior Living Strategies Publishing; and Index. Commercial Printing is the division responsible for production of the printed materials. Besides the individuals responsible for printing the materials, the Commercial Division also includes the sales and customer service personnel who deal with the Employer's commercial accounts. The Chamber Publishing Division is responsible for publishing chamber of commerce membership directories and maps, while the Senior Living Strategies Publishing Division publishes books for senior citizens and their families on issues of interest to that community. The Index Division includes the mailing department and fulfillment.⁴ The Employer employs a total of approximately 60 salaried and hourly employees.

For several years, the Union has represented the Employer's bindery employees and the press operators who operate the Employer's lithographic presses. The Union represents the bindery employees and press operators as two separate bargaining units and negotiates separate bargaining agreements with the Employer covering these two units. The press operator unit, which is also known as the Litho unit, is the bargaining unit at issue that the Employer seeks to clarify. The parties' new/successor collective-bargaining agreement describes that bargaining unit (hereinafter referred to as "Unit") as follows:

All employees performing work described in the jurisdiction
classifications described in Appendix "A" of this Agreement.

Appendix "A" sets forth the following classifications: Single Color Press Operator (26" – 31"); Letterpress Operator; Camera Operator/Negative Assemblers/Desktop Top Color Scanner Operator; Six Color Press Operator; Press Assistant; Four Color DI Press Operator; Four Color Press Operator Above 25"; Two Color Press Operator Above 25"; Platemaker; Press Operator 20" & Under; and General Worker.

At the time of the hearing, there were nine Unit employees employed by the Employer. There were 4 Six Color press operators, 2 press assistants, 1 Two Color press operator, 1 letterpress operator, and 1 employee in the "imposition area"⁵ who performs the functions formerly performed by the camera Operator/negative Assemblers/desktop top color scanner operator. The Employer did not employ anyone else in any of the other Unit classifications listed above. Until April

³ Although Raymond Lawton is the vice president of File-Ez Folder, Inc. and the Union represents some of File-Ez Folder's employees, File-Ez Folder is not involved in this proceeding. Raymond Lawton is also referred to in the record as "Chairman" Lawton.

⁴ Fulfillment is a service offered by Employer whereby it stores its customers' product and picks, packages, and delivers the product when requested by customers of its customers.

⁵ The Employer uses the term "imposition" to refer to functions formerly performed by the camera operator/negative assembler/ desk top color scanner.

2006,⁶ the Employer also employed one Four Color Direct Imaging press (“DI press”) operator in the Unit. As discussed below, the Employer at that point selected the DI press operator to operate the newly installed HP Indigo 5000 press, and determined that this HP Indigo 5000 operator was not a Unit position.

The letterpress operator is responsible for producing embossed papers, foil stamping, and die cutting. The other press operators are responsible for printing documents by operating the Employer’s offset and color presses. Press assistants are responsible for assisting the Six Color press operators by loading the paper on the presses, insuring that sufficient paper stock exists, and helping the press operator with the plates and ink used in the printing process. The one employee (Greg Beck) in the imposition area uses a computer to insure that the product to be printed is properly laid out and the pages properly sequenced.⁷ He then transmits the product or file to the press operators, including to the disputed HP Indigo 5000 operator.

In addition to the bindery and Unit employees represented by the Union, the Employer also employs several nonunion employees in other departments.⁸ Specifically, the Employer employs approximately 14 employees in its pre-press department. They operate computers and are responsible for performing various pre-printing tasks such as creative design work and the production of proofs. The silkscreen department consists of one employee who prepares stencils and screen used in the printing process. There are four non-union employees in the Employer’s mailing and fulfillment department. These employees prepare mailings, stuff envelopes, deliver mailings to the post office, but also provide services to customers such as direct mailing services, warehousing of customers’ printed materials and products, and providing targeted mailing lists.

B. HP Indigo 5000 Operator

On April 28, the Employer installed a new piece of equipment called the HP Indigo 5000 press.⁹ The Employer determined that this new press would fall under the jurisdiction of the mailing/fulfillment department primarily because the press’s technology is similar to the inkjet and laser printers used by employees in that department, and to enhance those employees’ abilities in performing their duties. The Employer did not actually place the new press in the mail department because of space limitations and the need to provide an air-conditioned and humidity-controlled space for the press. Consequently, the Employer has placed the new press in a separate room called the Indigo room.

In April, Laura Lawton selected DI press operator Aaron Lawton to be the HP Indigo 5000 operator.¹⁰ He assumed that position when the new press became operational on April 28. Prior to his selection, Aaron Lawton had been the DI press operator, a Unit position, for approximately four years. The Employer also increased Aaron Lawton’s wage rate to approximately \$24 per hour¹¹

⁶ All dates hereafter occurred in 2006 unless otherwise indicated.

⁷ The Union refers to him as a scanner operator.

⁸ The record is not clear with respect to which divisions the various departments fall under.

⁹ I recognize that Employer has provided extensive testimony disputing that the machine installed is a printing “press” and is more akin to a copying machine. I use the term press in this decision solely because that is the term that the manufacturer uses to describe it. I do not draw any specific conclusions in this decision, however, solely based on the label used.

¹⁰ The Employer did not post the position for the HP Indigo 5000 operator. Aaron Lawton is Laura Lawton’s brother and Raymond Lawton’s son. There is no contention that Aaron Lawton does not belong in the Unit because of his familial relationship.

¹¹ The record is sparse concerning Aaron Lawton’s wage rate as the HP Indigo 5000 operator beyond Laura Lawton’s estimate that Aaron’s wage rate was around \$24. Under the new contract reached between the Union and Employer, Aaron Lawton would have received \$21.36 per hour as of May 1, had he remained as the DI Press operator.

when he became the HP Indigo 5000 operator based on a couple of salary surveys that Laura Lawton had reviewed. As noted above, the Employer also determined that his position was not part of the Unit and communicated its determination to the Union. Upon installation of the HP Indigo 5000 press, the Employer ceased operation of the DI press and Raymond Lawton testified that the Employer intends to sell the DI press at some point.¹² Printing work that was previously performed on the DI press is now performed on the HP Indigo 5000 press and sometimes on the Six Color and Two Color press depending on the nature of the job.

The Employer presented extensive testimony through an expert witness and other witnesses concerning the differences in technology underlying the lithographic presses operated by the Unit press operators and the HP Indigo 5000 press. Essentially the HP Indigo 5000 press relies on copy machine technology whereby it uses digital files to transfer images through an electrostatic process. By contrast, most of the presses operated by Unit employees are based on a lithographic process whereby images are transferred by applying pressure to plates, which have an ink and water solution, to a “blanket” cylinder that presses against the paper and transfers the inked image. The procedure is based on the principle that water and grease do not mix, as the portion of the plate that does not contain the water permits the ink to adhere to the plate, which creates the image to be transferred. The HP Indigo 5000 press does not use ink, water, or plates to transfer a printed image; rather, it does use toner like a copying machine. Lithographic presses are used for “static” printing, whereby each page printed is the same until a plate is changed. This process is designed to print a fixed image of a quality many times higher than that of the HP Indigo 5000 press. In contrast to the “static” printing method of the lithographic presses, the new press is used for “variable” printing whereby each page printed can be different depending on the data specified. Thus, this variable printing allows the Employer to print tickets or mailings with individualized/sequenced numbers or addresses, for example.

The record also reveals that differences exist with respect to the training and skills necessary to operate the lithographic presses and the HP Indigo 5000 press. The lithographic press is a complex piece of equipment that requires the operator to constantly monitor the amount of pressure and ink being applied. Due to such complexity, these operators require much more extensive training and skills than are required for operation of the HP Indigo 5000 press. Although there is no formal apprentice training program, the Employer’s lithograph press operators usually require about 4 years of in-house training to acquire journeyman status. By contrast, it takes approximately two weeks of training, which the manufacturer provides, to operate the HP Indigo 5000 press. Operation of the HP Indigo 5000 press does not require constant monitoring during the print operation and permits the operator to perform other tasks. However, the evidence reveals that the Employer has not assigned additional duties or functions to the HP Indigo 5000 operator other than the tasks to operate the new press.¹³

Production Manager Tammy Head supervises all Unit employees as well as the HP Indigo 5000 operator. As noted above, Lawton earns approximately \$24 per hour while the current Unit

¹² Raymond Lawton acknowledged that the HP Indigo 5000 press had effectively replaced the DI press and that the HP Indigo 5000 operator now performs some of the same work that the DI press operator used to perform. Unit employee Lawrence Kite also supported that conclusion in his testimony. Kite testified that as a Six Color press operator, he used to perform a lot of work that was ordinarily done on the DI press when the DI press was not functioning or functioning properly. Since the installation of the HP Indigo 5000 press, however, the DI press work is no longer transferred to him. Kite also gave examples of previous DI press work—such as business cards and Chamber of Commerce directory covers—now being performed by the HP Indigo 5000 operator.

¹³ As Laura Lawton testified, printing tasks on the HP Indigo 5000 press are the only tasks assigned thus far to the HP Indigo 5000 operator, and he does not perform any other work when there are no print jobs to perform.

press operators and imposition employee earn between \$21.36 and \$27.87 per hour under the collective-bargaining agreement. Press Assistants earn \$15.39 per hour. Unit employees work 8-hour days, while the HP Indigo 5000 operator generally works 8 to 10 hours per day. Benefits vary somewhat between Unit employees and those employees not represented by the Union. Although Unit employees filled in for Aaron Lawton when he was absent from his previous DI press position, Unit employees currently do not fill in temporarily for him on the HP Indigo 5000 press.

C. Events Leading to the Filing of the Petition

Prior to the August 31, 2005, expiration date of the preceding collective-bargaining agreement covering the Unit employees, the Union and the Employer commenced negotiations for a successor agreement. Although the parties engaged in negotiations for several months, they were unable to initially reach a successor agreement primarily due to disagreement over wage, vacation, and pension issues. The parties eventually agreed to mediation and a mediation date of April 26 was established. At the April 26 mediation, the Employer and Union reached a tentative agreement on a two-year successor agreement. The employees ratified the new agreement on May 1. Following ratification of the agreement, the Employer immediately implemented wage increases that were set forth in the ratified agreement.¹⁴

During the latter stages of the contract negotiations, the Employer purchased the HP Indigo 5000 press described above for its operation. Through a letter dated April 12, Laura Lawton informed Brian Earl, the Union's President, that the Employer was installing the new press at the end of the month and that the Employer did not believe that the work to be performed on that press was within the Unit's jurisdiction. The letter claimed that the Employer's belief was based on a July 2003 decision by the National Labor Relations Board in *Delzer Lithograph*.¹⁵ Around the same time, Earl received a letter from Aaron Lawton, a Unit employee who had operated the DI press, indicating that he had accepted a new position with the Employer in an area not covered by the parties' collective-bargaining agreement and that he was, therefore, resigning from the Union.

In a letter dated April 17, Earl responded to Laura Lawton's letter by stating that he did not have enough information to determine whether the Union agreed or disagreed with the Employer's jurisdiction assertion and requested that the Employer furnish Earl with a copy of the *Delzer* decision on which the Employer was relying. After obtaining a copy of the *Delzer* decision, Earl faxed a May 9 letter to the Employer stating that the Union disagreed with the Employer's position that the HP Indigo 5000 operator position was not encompassed in the Unit's jurisdiction. The letter claimed that the "new equipment" language set forth in Section 2.2 of the parties' agreement¹⁶ required the parties to meet to negotiate a new rate for that equipment. Earl also indicated he was available to meet to discuss the matter further and negotiate a new rate. By letter dated May 18, the Employer claimed, again, that the new equipment did not fall within the Unit's jurisdiction and that Section 2.2 of the agreement consequently did not apply. Earl replied by letter dated May 25. That letter stated

¹⁴ The successor agreement was not signed as of the hearing in this case because the parties were still making minor corrections in drafts of the successor agreement that they had exchanged.

¹⁵ Actually, the Decision was a Decision and Order Denying Unit Clarification issued on July 31, 2003, by the Acting Regional Director in Region 30 of the NLRB in *Delzer Lithographic Company*, Case 30-UC-399 (hereinafter "*Delzer*").

¹⁶ Section 2.2 of the parties' contract states as follows: "In the event the Employer installs new machines or processes of types and sizes not covered in this Agreement in the Press or Pre-Press Departments, the Employer shall assign Employees to such new machines or processes, and shall make the initial determination as to the rates of pay and complement of employees for such machines or processes. The Employer shall notify the Union office within five (5) working days of making the determination. In the event the Union does not agree with the Employer's initial determination of the wage rates or the complement of employees, within thirty (30) days following notification by the Employer, the wages and complement of employees will then be determined by a committee of the Employer and the Union."

the Union considered the new equipment to fall within the Unit's jurisdiction and that if the Employer refused to meet to discuss the matter, Earl's letter should be considered a grievance protesting the Employer's unilateral action and requesting arbitration. The Employer responded in a June 7 letter, claiming the grievance procedure was not applicable and that the grievance was untimely. The parties did not discuss the matter further.

It is undisputed that the parties did not address the issue of whether the HP Indigo 5000 operator position was included in the Unit, during negotiations or during the April 26 mediation session leading to a successor agreement. On July 13, the Employer filed the instant unit clarification petition.

III. LEGAL ANALYSIS

A. Timeliness of Petition

The Union argues that the instant petition should be dismissed as untimely. Specifically, it argues that the dispute is contractual and best resolved by the parties' grievance arbitration procedure. It further argues that Section 2.2 of the parties' new contract requires the Employer to submit disputes over "new equipment or processes" to a committee of the Employer and Union and, thus, the Employer may not seek to exclude the position through the unit clarification procedure, particularly in view of the fact that the Employer did not raise the unit placement of the new equipment or processes during negotiations or mediation for the successor agreement. I do not find merit in these arguments and conclude that the petition is proper and timely to resolve the instant dispute.

The Board's general policy is to dismiss a unit clarification petition filed during the term of a contract dealing with the disputed classification if the party filing the petition did not reserve its right to file the petition during contract negotiations. *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). The Board has extended this general policy to the situation in which the parties have agreed to a contract but have not signed the agreement. *Edison Sault Electric Co.*, 313 NLRB 753 (1994). Nonetheless, unit clarification is appropriate in the middle of a contract term to determine the unit placement of employees performing a new operation or who fall under a newly-created classification. *E.I. DuPont Inc.*, 341 NLRB 607, 608 (2004); *Crown Cork & Seal Co.*, 203 NLRB 171 (1973). Under this exception to the Board's general policy, the Board will process the petition filed shortly after a contract is executed provided that the party filing the petition did not abandon its position in exchange for bargaining concessions. *St. Francis Hospital*, 282 NLRB 950, 951 (1987). The Board has not set a specific time limit concerning the requirement that a petition be filed shortly after the execution of a contract, and has used the contract ratification date to measure the timeliness of the petition where the contract has not yet been executed. *Sunoco, Inc.*, 347 NLRB No. 38, slip op. at 3 (June 16, 2006).

Applying the above precedent, I find that the instant petition is timely. Historically the parties have neither specifically included nor excluded the classification of HP Indigo 5000 operator (or the work on that press) in describing the Unit or in applying the Unit language. Rather, it is a newly created position over which the parties have a dispute concerning unit placement and therefore, Union representation. It is undisputed that the parties did not bargain about the placement of the position during the recent contract negotiations and mediation. Contrary to the Union's contention, the Employer never abandoned its position or determination during those negotiations that the operator position did not fall within the Unit's description when it agreed to the successor agreement. Although Section 2.2 of that agreement concerns resolution of wage rate and employee complement disputes when the Employer installs new machines in the press or pre-press departments, the Employer has always disputed that Section 2.2 applies because it did not install the HP Indigo 5000 press in the press or pre-press departments. Thus, the Employer is not seeking to exclude a

position that the parties have previously agreed to include in their contract. Compare *Edison Sault Electric Co.*, 313 NLRB 753 (1994) (employer's unit clarification petition filed after parties reached new labor agreement improper where disputed classification had been included in the unit in previous contracts and employer did not seek to exclude that classification during contract negotiations). Rather, the Employer is seeking to exclude a newly created classification from the Unit that the Union represents. Moreover, the Employer's failure to specifically reserve its right during contract negotiations to pursue the clarification issue before the Board does not constitute a waiver of its rights, in the circumstances of this case, when it agreed to the parties successor agreement. *Brookdale Hospital Medical Center*, 313 NLRB 592 fn. 3 (1993).

Further, the record reveals that the Union did not notify the Employer until May 9, of the Union's position that the HP Indigo press operator belonged in the Unit. Indeed, the parties continued to discuss the matter by letter until June 7. I find that the filing of the instant petition 2 months after contract ratification and 1 month following the parties' conclusion of their unsuccessful discussions of the matter, satisfies the Board's requirement that a party file the petition "shortly after" contract execution. See *Sunoco, Inc.*, supra. (Board finds petition timely even though petitioner did not request negotiations, which tolled the period for measuring the timeliness of the petition, until more than 4 months after parties ratified their labor agreement.)

Contrary to the Union, I do not find that *Coatings Application & Waterproofing Co. of Indiana, Inc.*, 307 NLRB 806 (1992), requires dismissal of the instant petition. In that case the Board dismissed a unit clarification petition because the evidence showed that the union had made a contractual claim that certain work should be assigned to its members rather than a representational claim over any employees. There, in the absence of any question concerning representation, the unit clarification procedure was not appropriate. Here, by contrast, the issue does not concern which employees—Union or nonunion—are entitled to perform the HP Indigo 5000 work. Rather, the issue is whether the newly created classification of HP Indigo 5000 operator belongs in the Unit. Such is a representational question that the unit clarification procedure is designed to resolve. Accordingly, I also reject the Union's argument that I should defer to the parties' grievance procedure to resolve this representational dispute.

In light of the above and the record as a whole, I find that the unit clarification process is appropriate for resolving this representational dispute over a newly created position during the term of the contract. *E.I. DuPont Inc.*, 341 NLRB 607, 608 (2004).

B. Placement of HP Indigo 5000 Operator Classification

The Employer contends that I should clarify the Unit to exclude the HP Indigo 5000 operator classification primarily because the technology of the HP Indigo press differs in significant respects from Unit work, especially from the lithographic press work noted above. In light of the fact that the work performed by the HP Indigo 5000 operator is similar to, and in some cases, substantially the same as had been performed by Unit employees, I find that the HP Indigo 5000 operator's primary job function is similar to Unit employees' job functions and that such job or work should be included in the Unit.

The Unit at issue is clearly defined by its work jurisdiction. As set forth in the Recognition article (Section 2.1) of the collective-bargaining agreement, the Unit is comprised of "all employees performing work described in the [Appendix "A"] jurisdiction classifications." The Board declared in

The Sun, 329 NLRB 854, 859 (1999), that it would apply the following standard in unit clarification proceedings that concerned a bargaining unit defined by the work performed:

If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate.

Thus, the Board's standard requires a 3-step analysis here: 1) whether the HP Indigo 5000 operator performs job functions similar to those performed by Unit employees; 2) if so, whether those job functions are incidental to or an insignificant part of their primary work; and 3) if the similar job functions are not insignificant, whether the Employer (as the party seeking to exclude the operator from the Unit) has shown that the HP Indigo 5000 operator is so dissimilar from Unit employees as to render the Unit inappropriate.

I initially find that the record evidence demonstrates that the job function of the HP Indigo 5000 operator is similar to the job functions of the Unit employees operating the lithographic presses. As a general matter, the lithographic press operators and the HP Indigo 5000 operator all have the same job function of preparing printed documents by operating a machine to transfer an image from one medium onto paper. Moreover, record evidence demonstrates that Aaron Lawton as the HP Indigo 5000 operator performs some of the *same* work that he performed as the DI press operator, a Unit position. Thus, Raymond Lawton acknowledged that the HP Indigo 5000 press had effectively replaced the DI press and that the HP Indigo 5000 operator now performs some of the same work that the DI press operator used to perform. Unit employee Kite also supported that conclusion in his testimony. Kite testified that as a Six Color press operator, he used to perform a lot of work that was ordinarily done on the DI press when the DI press was not functioning or functioning properly. Since the installation of the HP Indigo 5000 press, however, the DI press work is no longer transferred to him. Kite also gave examples of previous DI press work -- such as business cards and Chamber of Commerce directory covers -- now being performed by the HP Indigo 5000 operator.

The Employer is correct in pointing out that the technology behind the HP Indigo 5000 press differs significantly from that found in the lithographic presses. It is also correct in stating that different and greater skills are required to operate the more complex lithographic presses than the less complex HP Indigo 5000 press. I find, however, that such differences demonstrate and address changes in technology rather than a change in job function. For example, an office clerical now uses a computer to produce written documents versus earlier times when clericals used a typewriter or ink pen to produce such documents. Notwithstanding the change in technology, the clerical's job function of producing such documents, remains the same. Indeed, the Board in *The Sun*, *supra*, has also cautioned against reliance on changed or improved technology to establish that a particular job function has changed:

. . . a showing that technological innovation has affected unit work will not suffice to exclude new classifications performing that work from the unit unless the work has changed to such an extent that the unit would no longer make sense if it included the disputed employees. Thus, the presumption [that the new employees should be added to the unit] will apply if the only significant differences in the work performed 'flow directly from the improved methodology and increased efficiency brought on by computer technology.' [Citation omitted.] 329 NLRB at 859.

Here, in the circumstances of this case, I am not persuaded that the different technology and skill level cited above demonstrate that the job function of the HP Indigo 5000 operator is not similar to that of the Unit employees.

Regarding the second step of the analysis, I find that the job (or printing) function of the HP Indigo 5000 operator that is similar to the job function of the Unit press operators, is not incidental to, or an insignificant part of, his primary work. Rather, his job or printing function is the only job that the HP Indigo 5000 operator performs. As Laura Lawton testified, printing tasks on the HP Indigo 5000 press are the only tasks assigned thus far to the HP Indigo 5000 operator, and he does not perform any other work when there are no print jobs to perform.

Contrary to the Employer's contention, I also conclude that the Employer has not met its burden of showing that the HP Indigo 5000 operator is as dissimilar from the Unit employees as to render the Unit inappropriate. Initially, I note that several factors show that Unit employees share a community of interest with the HP Indigo 5000 operator. As noted above, they perform similar job functions. They also share common supervision in Production Manager Head, and have comparable wage rates and hours. As Unit employee Beck prepares and transmits many of the files that the HP Indigo 5000 operator prints, functional integration is also evident. Further, the only employee who has held the HP Indigo 5000 operator position transferred from the DI press, which was undisputedly a Unit position -- thus, there is also evidence of permanent interchange between the new position and the Unit.

Most significant, however, is the absence of evidence showing that inclusion of the HP Indigo 5000 operator in the Unit would make the Unit an inappropriate bargaining unit. I reject the Employer's reliance on the dissimilarity in employment terms, such as benefits and working conditions between the Unit employees and the HP Indigo 5000 operator, to meet its burden because those are factors that the Employer controlled by initially placing the HP Indigo 5000 operator in a nonunion position. See *The Sun*, 329 NLRB 854, 859 (1999) (disparity in factors that an employer can manipulate in an effort to exclude employees from a unit are not appropriate to rebut the presumption that the employees should be included once it has been shown that similar job functions exist). Here, I note that there are differences in skill level and training, and an absence of temporary interchange or significant contact, between the HP Indigo 5000 operator and the Unit employees. However, those factors are insufficient to establish that the classifications are so dissimilar as to render the Unit inappropriate if the HP Indigo 5000 operator were included.

The cases cited in the Employer's brief do not require a different result. Two of the decisions that the Employer cites¹⁷ stand for the unremarkable proposition that a unit sought that was restricted to lithographic employees constitutes an appropriate bargaining unit. Whether a unit restricted to the Employer's employees operating lithographic equipment is an appropriate unit is not the issue presented to me by the instant unit clarification petition. Thus, I do not find that those cases to be on point. There is also no merit to the Employer's contention that *Young & Selden Co., Div. of Diebold, Inc.*, 147 NLRB 67 (1964), and *General Motors Corp., GM Photographic Engineering Center*, 143 NLRB 647 (1963), require that I exclude the HP Indigo 5000 operator from the Unit. The Board in both of those cases found that the groups of employees sought did not constitute a traditional unit of employees with skills in lithographic production and therefore found the units inappropriate. Here, there is no showing that the Unit description is limited to traditional lithographic production. Indeed, the Unit includes employees who do not operate lithographic equipment. Thus, I do not find that those cases control my decision here. Rather, as noted above, the proper analysis is set forth in *The Sun*, *supra*, because the Unit is defined by its work jurisdiction.

¹⁷ *George Rice & Sons*, 212 NLRB 947 (1974); *Robinson Printers, Inc.*, 118 NLRB 518 (1957).

I also specifically reject the Employer's argument that the *Delzer* decision compels the conclusion that I should exclude the HP Indigo 5000 operator from the Unit. Initially, I note that Regional Director's decisions are non-binding on other Regions.¹⁸ Moreover, there are three significant differences between the facts in the *Delzer* case and the present one that render that decision inapposite.

First, the contractual descriptions of the bargaining units at issue in *Delzer* and in this case, differ significantly. The contract in the *Delzer* case defined the unit as those employees performing "lithographic production work." Thus, the determination that the operator in question was not performing lithographic work was central to the conclusion that the operator should be excluded. By contrast, the Unit description here does not refer to lithographic production or lithography, but refers to work performed by certain classifications, including classifications that do not use lithographic presses (such as the letterpress and imposition employee). Thus, the fact that the HP Indigo 5000 operator does not operate a lithographic press is not conclusive in the case before me.

Second, the employee at issue in *Delzer* was not performing a bargaining unit job when the employer selected her to operate the new digital printer and did not perform work as the digital printer operator that bargaining unit employees had previously performed. By contrast, here, the Employer moved a Union-represented Unit employee into the allegedly new nonunion position and, in that role, assigned him to perform some of the same work he had performed as a Unit employee.

Third, the employee in question in *Delzer* performed work in the disputed classification that was merely incidental to her primary work as a non-unit employee because she spent only 1 to 2 hours of her 8-hour day performing the digital printer work. By contrast, the HP Indigo 5000 operator spends all of his time performing printing tasks on the HP Indigo 5000 press.

In light of the foregoing and the record evidence, I find that the Unit should be clarified to include the HP Indigo 5000 operator position.

IV. CONCLUSION

The instant unit clarification petition was timely filed and the Unit represented by the Union should be clarified to include the HP Indigo 5000 operator position.

V. ORDER

The HP Indigo 5000 operator position is included in the Unit described above and represented by the Union.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington **by 5 p.m. EDST on September 1, 2006**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with

¹⁸ See *Rental Uniform Service Inc.*, 330 NLRB 334, fn. 10 (1999).

its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

DATED at Seattle, Washington, this 18th day of August 2006.

/s/ James R. Kobe

James R. Kobe, Acting Regional Director
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